



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 4, 1992

Honorable Larry W. Allison
Lampasas County Attorney
27th Judicial District Attorney
P. O. Box 1300
Lampasas, Texas 76550

Letter Opinion No. 92-81

Re: Questions related to the collection
and use of the records management and
preservation fee pursuant to section
118.0216 of the Local Government
Code (RQ-315)

Dear Mr. Allison:

You have requested our interpretation of section 118.0216 of the Local Government Code, which pertains to fees for records management and preservation that section 118.011 of the Local Government Code authorizes a county clerk to collect. Specifically, you ask the following five questions:

1. Is the [records management and preservation] fee a designated (discretionary fund) fee under the control of the County Clerk?
2. Can the fee collected under this Section be used to rent or lease additional office space to store county records if the present facilities are not adequate?
3. If the County Clerk is out of space in the Court House, can the County Clerk move offices across the street to a privately owned building and use this fee either in whole or in part to defray the cost of the monthly lease or purchase payments?
4. Is the fee to be deposited into the County Treasury to be used by the County Clerk for the purposes set out in the statute?
5. What is "specific records preservation"?

Pursuant to article V, section 20 of the Texas Constitution, the legislature has prescribed, in sections 118.011 through 118.024 of the Local Government Code,

several fees that a county clerk must or may collect from all persons for certain services that a county clerk performs. *See also* 35 D. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 10.14, at 341 (Texas Practice 1989). Subsection (a) of section 118.011 lists several fees that a county clerk is required to collect. Subsection (b) lists fees that a county clerk is authorized, but not required, to collect. Among other fees, subsection (b) permits a county clerk to collect a fee of not more than \$5.00 for records management and preservation.

Section 118.0216 of the Local Government Code specifies that the records management and preservation fee permitted under section 118.011 "is for the records management and preservation services" the county clerk performs after a document¹ is filed and recorded in the records of the clerk's office. Section 118.0216 requires a person filing a document with the county clerk's office to pay the fee at the time of the filing of the document. The section also limits the use of the fee, stating that it "may be used only to provide funds for specific records preservation and automation projects."

In Letter Opinion No. 92-7 (1992) (copy enclosed), this office concluded that a county clerk must deposit with the county treasurer all of the records management and preservation fees that he or she collects. Letter Opinion No. 92-7 at 2. Additionally, we concluded that the county commissioners court is responsible for allocating county funds, including monies collected as records management and preservation fees. *Id.* at 2-3. However, pursuant to section 118.0216 of the Local Government Code, the county commissioners court may expend such monies only "for specific records preservation and automation projects." *Id.* at 3.

Your fifth question directly asks, and your second and third questions indirectly ask, for a construction of the phrase, "specific records preservation and automation projects." We found no legislative history clarifying the purpose for which the legislature intended the records management and preservation fee to be spent. We therefore must rely solely on the plain language of section 118.0216.

In Letter Opinion No. 92-7 we stated that funds collected under section 118.011 may be used only for "specific records preservation and automation projects" that are performed in the office of the county clerk. Determining whether

¹In the context of chapter 118 of the Local Government Code, "document" includes any instrument, document, paper or record." Local Gov't Code § 118.001.

a particular project will aid in preserving or automating county records involves the resolution of facts, a task this committee is unable to perform. Instead, we believe that the commissioners court must, in the first instance, determine whether a particular project is a "specific records preservation and automation project." Thus, whether the revenues generated by the records preservation and management fee can be used to rent or purchase additional storage space for the county clerk's records is a matter that the commissioners court must determine.²

S U M M A R Y

Pursuant to sections 118.011(b) and 118.0216 of the Local Government Code, a county clerk may collect a records preservation and management fee. The county clerk must deposit any records preservation and management fees collected into the county treasury. The county commissioners court has sole discretion to determine how the county will spend revenues generated by this fee, so long as the court uses the fee for the purpose stipulated in section 118.0216 of the Local Government Code: "specific records preservation and automation projects." Whether a particular project is a "specific records preservation and automation project" is an issue that the county commissioners court must decide in the first instance.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Opinion Committee

²Implicit in your second and third questions is the question of whether a county may rent or purchase additional office or storage space from a private entity. A county may contract for any legal purpose. Local Gov't Code § 262.001(a)(3). However, only the county commissioners court is authorized to contract for the county. 35 D. BROOKS, *supra* § 5.13, at 157. The commissioners court may delegate its contracting authority to an appointed agent, Local Gov't Code § 262.001(a), but the commissioners court must provide the agent with sufficient guidelines so that the court avoids delegating any of its discretionary authority. 35 D. BROOKS, *supra* § 5.13, at 158.